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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/813,493	03/30/2004	L. Reg Funk	64,617-013	4900

7590 01/09/2009
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EXAMINER

WATSON, ROBERT C

ART UNIT	PAPER NUMBER
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3723

MAIL DATE	DELIVERY MODE
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01/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/813,493	Applicant(s) FUNK ET AL.	
	Examiner Robert C. Watson	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 58-61, 63-67 and 70-80 is/are pending in the application.
- 4a) Of the above claim(s) 61, 64, 71-75 and 77-80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 58-60, 63, 65-67, 70, and 76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 58-60, 63, 65-67, 70, and 76 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The description for Figure 16, the elected species, provides inadequate antecedent support for the language used in the claims. For example, the description with regard to Figure 16 does have the terminology; "first planar body", second planar body", "first pocket", "second pocket", "configured to engage the ground surface". The claims are wholly ambiguous, indeterminate of scope, and entirely lack antecedent support in the description.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 58-60, 63, 65-67, 70, and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gano in view of Extine, Blatz et al, Shih and Giorgi.

Gano shows a positional restraint with an upper surface that is planar at one end and has a ramp like obstruction at the other end.

Extine teaches that positional restraints 30 may be removeably mounted on a first planar body by means of mating interfitting projections and pockets and may have a curvilinear shape as at 34.

Gano's postitional restraint ramp portion may obviously have a curvilinear shape the bottom thereof may have mating interfitting projections/pockets for engagement with a first planar member in view of the teachings of Extine.

Gano's positional restraint may obviously be used in combination with other wheel engaging stackable blocks such as the planar blocks of Blatz having octagonal projections/pockets. One skilled in the art would have been motivated to do this in order to achive a multi-tiered wheel support.

Shih and Giorgi show how blocks may have planar portions with a heel to interfit with other planar portions in a vast multitude of planar arrays. Using this broad technique one skilled in the art could obviously provide a heel in Gano and make Gano interfit with other planar blocks in any planar interfitting tiered relationship as one desires for convenience and utility. The examiner takes Official Notice that the ordinary level of skill in this art is demonstrated by children stacking Lego Blocks TM. Merely providing heels, pockets, projections, notches, etc. to interfit blocks anywhere desired is obvious and well known in the art and one skilled in the art can readily provide the necessary heels, pockets, projections, and notches anywhere desired to interfit any blocks in any planar configuration desired is obvious and children could accomplish this. The claims are no more than a combination of old elements which is not patentable under the "KSR" doctrine.

Claims 61, 64, 71-75, and 77-80 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no

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allowable generic or linking claim. Election was made **without** traverse in the reply filed on 9/29/05.

Applicant's remarks have been given careful consideration. The claims are directed to merely providing heels, pockets, projections, and notches to interfit blocks and this is obvious and well known in the art and one skilled in the art can readily provide the necessary heels, pockets, projections, and notches anywhere desired to interfit any blocks in any planar configuration desired is obvious and children could accomplish this as is well known in the Lego Block TM art. The claims are no more than a combination of old elements and reasons have been provided for combining these old elements hence the claims are not patentable under the "KSR" doctrine.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert C. Watson whose telephone number is 571 272-4498. The examiner can normally be reached on Mon. - Thurs. , 5:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail III can be reached on 571 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert C. Watson/

Primary Examiner, Art Unit 3723

rcw